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Report
No. 1483

ENHANCING FURTHER THE SECURITY OF THE UNITED STATES
BY PREVENTING DISCLOSURES OF INFORMATION CONCERNING
THE CRYPTOGRAPHIC SYSTEMS AND THE COMMUNICATION
INTELLIGENCE ACTIVITIES OF THE UNITED STATES

MAY 28 (legislative day, MAY 20), 1948.—Ordered to be printed

Mr. BALDWIN, from the Committee on Armed Services, submitted the
following

REPORT

[To accompany S. 2680]

The Committee on Armed Services, to whom was referred the bill (S. 2680) to enhance further the security of the United States by preventing disclosures of information concerning the cryptographic systems and the communication intelligence activities of the United States, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

AMENDMENTS TO THE BILL

Page 2, lines 24 and 25, strike out the sentence:

The term "cryptographic purposes" as used herein is correspondingly extended in the scope of its meaning.

Page 3, lines 13, 14, and 15, strike out the sentence:

The terms "communication intelligence activities" and "communication intelligence purposes" as used herein shall be construed accordingly.

PURPOSE OF THE BILL

The purpose of this bill is to prevent the revelation of important information about United States communication intelligence activities and United States codes and ciphers by persons who disclose such information without proper authority, and to prescribe penalties to those revealing such information. Stated briefly, this bill makes it a crime to reveal the methods, techniques, and material used in the transmission by the Nation of enciphered or coded messages. It does not control in any way the free dissemination of information which might be transmitted by code or cipher, unless that information

1433

ENHANCE FURTHER SECURITY OF THE UNITED STATES

3

• • • concerning the communication intelligence activities of the United States or any foreign government.
 • • • obtained by the processes of communication intelligence from the communications of • • • any foreign government.

Information of the second category is covered by inclusion of the words, "the United States or" in the first, second, and fourth of the phrases quoted above. The bill does not prohibit the publication or disclosure of United States Government messages in general.

In addition, it should be noted that the restrictions on disclosure apply only to the types of classified information defined in the phrases quoted above.

DISCUSSION

Earlier versions of this same bill (S. 805, 79th Cong., and S. 1019, 80th Cong.) would have penalized the revelation or publication, not only of direct information about United States codes and ciphers themselves but of information transmitted in United States codes and ciphers. This provision is not included in the present version. Under the bill as now drafted there is no penalty for publishing the contents of United States Government communications (except, of course, those which reveal information in the categories directly protected by the bill itself). Even the texts of coded Government messages can be published without penalty as far as this bill is concerned, whether released for such publication by due authority of a Government department or passed out without authority or against orders by personnel of a department. In the latter case, of course, the Government personnel involved might be subject to punishment by administrative action but not, it is noted, under the provisions of this bill. It is noted, further, that in such a case the representative of the press who receives and publishes the information could not be penalized under this bill, since he should certainly be able to maintain unassailable the position that he had received the information in good faith from an employee or official whose authority to give it to him it was not his business to question.

The bill, while carefully avoiding the infringement of civil liberties, extends the protected field covered by the extremely narrow act of June 10, 1933 (48 Stat. 122), the latter being of far too limited application to afford to certain highly secret Government activities the protection which they need. The need for protection of this sort is best illustrated by an account of the very circumstances which surrounded the enactment of the act of June 10, 1933. In 1931 there had been published in the United States a book which gave a detailed account of United States successes in breaking Japanese diplomatic codes during the decade prior to publication. In 1933, it was learned that the same author had already placed in the hands of his publishers the manuscript of another book which made further detailed revelations of United States success in the breaking of foreign diplomatic codes. Immediate action secured the passage by the Congress of the measure of June 10, which effectively stopped publication of the second book. Unfortunately, the first book had done, and continued to do, irreparable harm. It had caused a furor in Japanese Government circles, and Japanese diplomatic codes had been changed shortly after its appearance. The new codes were more complex and difficult to solve than the old ones, and throughout the years from then until World War II not only the Japanese diplomatic

4

ENHANCE FURTHER SECURITY OF THE UNITED STATES

cryptographers but the military and naval cryptographers as well were obviously devoting more study to cryptography than they ever had before. In 1934 they introduced their first diplomatic machine cipher. Year by year, their codes and ciphers improved progressively by radical steps, and United States cryptanalysts had more and more difficulty and required more and more time to break them. It can be said that United States inability to decode the important Japanese military communications in the days immediately leading up to Pearl Harbor was directly ascribable to the state of code-security consciousness which the revelations of a decade earlier had forced on Japanese officialdom.

RECOMMENDATION OF THE NAVY DEPARTMENT

There is appended a letter from the Secretary of the Navy which recites the views of the Navy Department in recommending enactment of this bill.

DEPARTMENT OF THE NAVY,
Washington, May 7, 1948.

HON. CHAN GURNEY,
Chairman of the Committee on Armed Services,
United States Senate.

MY DEAR MR. CHAIRMAN: There is transmitted herewith a draft of a proposed bill to enhance further the security of the United States by preventing disclosures of information concerning the cryptographic systems and the communication-intelligence activities of the United States.

The purpose of the proposed bill is to further insure the military security of the United States by providing that the unauthorized disclosure by any person of classified information concerning the cryptographic systems and the communication-intelligence activities of the United States shall be a statutory offense.

During the war it was necessary to make a great many matters of a confidential nature accessible to a considerable number of service personnel and employees who have since been severed from their wartime duties and who may fail to safeguard official information which is within their knowledge. Existing laws do not adequately protect the security of information of this character, and it is considered of utmost urgency and importance from the standpoint of national security that legislation be enacted which will fully protect the security of classified matter. The joint committee of Congress which investigated the Pearl Harbor attack recognized this fact and in its report recommended that Congress give serious study, among other things, to "legislation fully protecting the security of classified matter."

The proposed bill represents the combined views of the Army, Navy, Air Force, Central Intelligence Agency, and the Department of State, as to the legislation which is necessary to prevent the unauthorized disclosure of such classified information. The Navy Department is sponsoring this legislation on behalf of all of the foregoing organizations. The proposed bill is submitted as a substitute for H. R. 2965, covering the same subject, which was introduced in the first session of the Eightieth Congress at the request of the Navy Department. The principal points of difference between H. R. 2965 and the bill now proposed are as follows:

The clause in H. R. 2965 providing penalties for revealing information transmitted in United States cryptographic systems has been omitted in the proposed bill. While there is still a need for a statute to protect United States cryptographic systems by prohibiting, or in some way limiting, the publication or other revelation to foreign governments, or individuals, of the texts of messages which have been transmitted in those systems, because of its controversial nature this clause has been omitted in the proposed bill in the interest of the bill's primary purpose. H. R. 2965 would apply only to persons who had acquired information by virtue of certain employment by the United States or foreign governments. Under this limitation a person who had stolen this information from the Government could reveal it with impunity. Also an individual or group of individuals

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ENHANCE FURTHER SECURITY OF THE UNITED STATES

who had privately engaged in cryptanalysis of foreign systems could publish their technical results with impunity, although such publication would be just as damaging to the United States communication intelligence effectiveness as if it had been by a Government employee. The proposed bill omits the qualification as to employment. With the elimination in the proposed bill of the employment feature, there is no longer any need for the separate section 1 and section 2, which appear in H. R. 2965, one of which applies to persons employed by the United States and the other to persons employed by foreign governments. H. R. 2965, as introduced, covered "information" of certain categories, while the proposed bill covers "classified information" of these categories, and the term "classified information" is defined. This change has been made to overcome certain objections of the United States Archivist. Where the terms "cryptanalysis" and "cryptanalytic" were used in H. R. 2965, the term "communication intelligence" has been substituted in the proposed bill as being more suitable for the conveyance of the intended meaning.

The Navy Department, in conjunction with the Army, Air Force, Central Intelligence Agency, and Department of State, strongly recommends the enactment of the proposed legislation.

An identical report has been transmitted to the Speaker of the House of Representatives this date.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.